

The Honorable Barbara J. Rothstein

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States of America,
et al.

Defendants.

NO. 2:19-01502-BJR

STIPULATED ORDER ESTABLISHING
BRIEFING SCHEDULE FOR EXPEDITED
RESOLUTION OF THIS CASE AND
PROHIBITING DEFENDANTS'
OBLIGATION OF FUNDS AUTHORIZED
TO BE APPROPRIATED FOR NAVAL
BASE KITSAP PRIOR TO A DECISION BY
THIS COURT

STIPULATION

WHEREAS the State of Washington has filed this suit to enjoin Defendants' use of funds authorized to be appropriated by Congress for military construction projects, including \$88.96 million in funding for construction of the Bangor Pier and Maintenance facility at Naval Base Kitsap (*see* John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 2201, 132 Stat. 1636 (2018));

1 WHEREAS the Department of Defense does not intend to obligate any portion of the
2 \$88.96 million authorized to be appropriated by Congress for the Bangor Pier and Maintenance
3 Facility prior to February 1, 2020;

4 WHEREAS the parties wish to avoid any motion practice aimed at ensuring that the
5 funds authorized to be appropriated for the Bangor Pier and Maintenance Facility remain
6 unobligated during the pendency of this litigation;

7 WHEREAS the parties agree this case can be resolved on an expedited basis prior to
8 February 1, 2020, through cross-motions for summary judgment and have agreed to a schedule
9 to enable the Court to issue a final judgment prior to that date;

10 WHEREAS in order to avoid litigation over a motion for a preliminary injunction and
11 other pretrial proceedings that would not further the interests of either party or judicial resources,
12 the parties respectfully request the Court issue a decision on the cross-motions for summary
13 judgement on or before February 1, 2020; and

14 WHEREAS the parties' consent to this Stipulation is conditioned on receiving a final
15 decision in this matter on or before February 1, 2020. In the event the Court has concerns with
16 this proposed schedule or the parties' request for a decision before February 1, 2020, in order to
17 avoid preliminary injunction proceedings, the parties are available for a telephone status
18 conference at the Court's convenience to discuss scheduling in this case:

19 IT IS HEREBY STIPULATED by the parties, through their undersigned counsel, that
20 this Court should enter an order providing that:

21 1. Defendants are prohibited from obligating, using, or otherwise placing beyond
22 the limits of judicial process any portion of the \$88.96 million authorized to be appropriated by
23 Congress for the Bangor Pier and Maintenance Facility prior to February 1, 2020. This
24 prohibition is enforceable through a court order;

2. The following briefing and hearing schedule shall govern resolution of this case:

| DATE | EVENT |
|--|---|
| October 11, 2019 | Defendants file administrative record regarding DoD's decision to authorize barrier projects pursuant to 10 U.S.C. § 2808 |
| October 25, 2019 | Plaintiff's Motion for Summary Judgment (30 pages) |
| November 15, 2019 | Defendants' Cross-Motion For Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment (30 pages) |
| December 6, 2019 | Plaintiff's Opposition to Defendants' Cross-Motion and Reply in Support of Motion for Summary Judgment (20 pages) |
| December 16, 2019 | Defendants' Reply in Support of Cross-Motion for Summary Judgment (20 pages) |
| Week of December 16, 2019 or January 6, 2020 | Oral argument |

3. This briefing schedule assumes there are no disputes about the completeness of the Administrative Record that Defendants produce on October 11, 2019. If Washington believes the Administrative Record is deficient or incomplete, it will promptly meet and confer with Defendants to determine whether any adjustments to the summary judgment briefing schedule will be necessary.

4. In light of the foregoing schedule, all other case management and pre-trial activity is stayed. The stay includes the deadlines for the parties to conduct a 26(f) conference, to file a Rule 26(f) report and case management statement, to provide initial disclosures under Rule 26(a)(1), and for Defendants to respond to the Complaint under Rule 12. This stay shall not preclude Plaintiff from (1) moving to compel supplementation of the administrative record or (2) amending its Complaint, if appropriate.

1 It is SO AGREED this 11th day of October 2019.

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Attorney General

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Assistant Attorney General

4
5 /s/ Andrew R.W. Hughes

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Attorneys for Defendants

ORDER

Having reviewed the foregoing stipulation and good cause appearing therefore, IT IS
HEREBY ORDERED:

1. Defendants are prohibited from obligating, using, or otherwise placing beyond the limits of judicial process any portion of the \$88.96 million authorized to be appropriated for the Bangor Pier and Maintenance Facility prior to February 1, 2020. This order shall be enforceable to the same extent as an injunction under Federal Rule of Civil Procedure 65;

2. The following briefing and hearing schedule shall govern resolution of this case:

| DATE | EVENT |
|-------------------|---|
| October 11, 2019 | Defendants file administrative record regarding Department of Defense's decision to authorize barrier projects pursuant to 10 U.S.C. § 2808 |
| October 25, 2019 | Plaintiff's Motion for Summary Judgment (30 pages) |
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| December 16, 2019 | Defendants' Reply in Support of Cross-Motion for Summary Judgment (20 pages) |

3. This briefing schedule assumes there are no disputes about the completeness of the Administrative Record that Defendants produce on October 11. If Washington believes the Administrative Record is deficient or incomplete, it will promptly meet and confer with Defendants to determine whether any adjustments to the summary judgment briefing schedule will be necessary.

1 4. In light of the foregoing schedule, all other case management and pre-trial activity
2 is stayed. The stay includes the deadlines for the parties to conduct a Rule 26(f) conference, to
3 file a Rule 26(f) report and case management statement, to provide initial disclosures under Rule
4 26(a)(1), and for Defendants to respond to the Complaint under Rule 12. This stay shall not
5 preclude Plaintiff from (1) moving to compel supplementation of the administrative record or
6 (2) amending its Complaint, if appropriate.

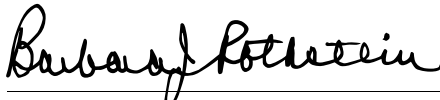
7 5. To facilitate expedited and efficient final resolution of this case without the need
8 for preliminary injunction proceedings, the Court will endeavor to issue a decision on the cross-
9 motions for summary judgment on or before February 1, 2020.

10 6. In the event it is impracticable for the Court to issue a decision by February 1,
11 2020 and this Order needs to be extended the parties shall be available for a status conference at
12 Seattle on January 21, 2020.

13 7. In the event the Court notifies the parties that the Court is unable to issue a
14 decision before February 1, 2020, or in the event the Court has not issued a decision by
15 January 21, 2020, Plaintiff may move for an extension of the order to prohibit the obligation of
16 the funds at issue until the Court issues a decision on the cross-motions for summary judgment.
17 In the event Plaintiff requests such an extension, Defendants may oppose Plaintiffs' motion on
18 any and all grounds, other than on the basis that the extension should not be granted because the
19 expected obligation date is not imminent.

20 IT IS SO ORDERED.

21 DATED this 16th day of October, 2019

22 
23 _____
24 Barbara Jacobs Rothstein
25 U.S. District Court Judge
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